IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

TRIANTAFYLLOS TAFAS, Plaintiff, v. JON W. DUDAS, et al., Defendants.	)	Civil Action No. 1:07cv846(L) (JCC/TRJ)

CONSOLIDATED WITH

SMITHKLINE BEECHAM CORP., d/b/a GLAXOSMITHKLINE, et al., Plaintiffs, v. JON W. DUDAS, et al., Defendants.	)	Civil Action No. 1:07cv1008 (JCC/TRJ)

MOTION TO CONTINUE HEARING ON MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, SUBMIT WITHOUT HEARING

Defendants, by their undersigned counsel, respectfully move the Court pursuant to Local Civil Rule 7(F)(1) for an Order continuing the hearing that Plaintiff Triantafyllos Tafas noticed for January 25, 2008 on his Motion for Reconsideration of this Court's January 9, 2008 Order and Memorandum Opinion, Dkt. No. 244. The grounds for this motion are:

1) Employing the Court's ECF system, Tafas filed his Motion for Reconsideration on Friday, January 18, 2008, after the close of regular business hours. He noticed the motion for hearing the next Friday, January 25, 2008.

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2) Counsel for Tafas did not confer with undersigned counsel prior to noticing this hearing, as required under Local Rule 7(E).

3) Under Local Rule 7(F)(1), when a motion is opposed, "[u]nless otherwise directed by the Court the opposing party shall file a responsive brief and such supporting documents as are appropriate, within eleven (11) days after service and the moving party may file a rebuttal brief within three (3) days after service of the opposing party's reply brief." The Court has not entered a scheduling order altering the time periods provided by Local Rule 7(F)(1).[1]

4) The hearing date noticed by Tafas for his Motion for Reconsideration does not comply with the time periods set by Local Rule 7(F)(1), as it would require Defendants to submit any memoranda opposing reconsideration by today or, at the latest, tomorrow, in order for the Court to be able to consider the opposition memorandum before Friday's hearing.[2]

5) Under the schedule set out in Local Rule 7(F)(1), calculated in accordance with Federal Rule of Civil Procedure 6(d), Defendants' opposition memorandum – to the extent one is required[3] – is due on February 1, 2008.

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[1] Such an order would have been unnecessary in this case, which arises under the Administrative Procedure Act, 5 U.S.C. § 701 et seq., and may be decided on cross-motions for summary judgment, without a discovery period or trial.

[2] To be sure, the parties, including Defendants, have in the past noticed other motions on the Friday-to-Friday schedule contained in the Court's commonly-entered scheduling order, and the parties have acceded to that schedule. The parties' prior motions practice did not occur in the midst of the demanding summary judgment briefing schedule under which the parties are now working. Defendants are unable to accede to the Friday-to-Friday schedule at this time when the Local Rules entitle them to more time and they were required to file two substantial summary judgment opposition memoranda yesterday.

[3] Under the Federal Rules of Appellate Procedure, an answer to a petition for rehearing is not permitted unless the Court requests one. See Fed. R. App. P. 40(a)(3). Defendants are unaware of a Local Rule that addresses this situation, but note that the issues underlying the Motion for Reconsideration have already been exhaustively briefed before both Magistrate Judge Jones and this Court.

6) Defendants thus ask the Court to continue the hearing on Tafas's Motion for Reconsideration to February 8, 2008, when the parties will also be before the Court on their cross-motions for summary judgment and Defendants' Motion to Strike, or in the alternative, to have the motion submitted without a hearing. Defendants suggest that a hearing is unnecessary, as it would be the *fourth* hearing on the same discovery and privilege log issues.

7) Pursuant to Local Rule 7(E), undersigned counsel for Defendants contacted counsel for Tafas and asked counsel to allow Defendants the time to which they are entitled under the Local Rules to respond to this motion by continuing the hearing to February 8, 2008. Counsel for Tafas was unwilling to agree to that relief, but was willing to entertain submitting his Motion for Reconsideration without hearing if Defendants would agree to file their opposition by tomorrow – a condition that did not provide any material assistance to Defendants and that deprives Defendants of the time to which they are entitled under the Local Rules.

Wherefore, Defendants move the Court for an extension of the hearing on Tafas' Motion for Reconsideration to February 8, 2008, or in the alternative, to allow the Motion for Reconsideration to be submitted on the papers without hearing such that Defendants may respond by February 1, 2008 if the Court requires a response. Alternative proposed orders are attached for the convenience of the Court.

Respectfully submitted,

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